

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA 08-522

BRENT WENTZ

APPELLANT

V.

LABOR READY and ESIS

APPELLEES

Opinion Delivered DECEMBER 3, 2008

APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION,
[NO. F701824]

AFFIRMED

JOHN B. ROBBINS, Judge

In this appeal of a decision of the Workers' Compensation Commission, appellant Brent Wentz challenges the denial of his claim for a work-related back injury, which included a request for medical expenses, temporary total disability benefits, and attorney fees. Appellant contends that there is no substantial evidence to support a finding that there was no specific accidental injury on the basis that appellant did not formally notify his employer for five days. Appellee Labor Ready asserts that the Commission's decision, which affirmed and adopted the Administrative Law Judge's (ALJ) decision, is supported by substantial evidence because it rested on the credibility of the claimant, which was lacking. After considering this case under the appropriate standard of review, we affirm.

When reviewing decisions from the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm if supported by substantial evidence. *Luten v. Xpress*

Boats, __ Ark. App. __, __ S.W.3d __ (June 18, 2008); *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). Substantial evidence is that which a reasonable person might accept as adequate to support a conclusion. *Smith v. County Market/Southeast Foods*, 73 Ark. App. 333, 44 S.W.3d 737 (2001). A decision by the Workers' Compensation Commission should not be reversed unless it is clear that fair-minded persons could not have reached the same conclusions if presented with the same facts. *Id.* The issue is not whether this court might have reached a different result from that reached by the Commission, or whether the evidence would have supported a contrary finding. *See id.* The Commission is not required to believe the testimony of any witness but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *See Emerson Elec. v. Gaston*, 75 Ark. App. 232, 58 S.W.3d 848 (2001). Once the Commission has made a decision on the issue of credibility, the appellate court is bound by that decision. *See id.* Without an initial finding of compensability, a claimant cannot be awarded temporary total disability benefits or additional medical treatment. *Cross v. Magnolia Hosp. Reciprocal Group of Am.*, 82 Ark. App. 406, 109 S.W.3d 145 (2003).

The testimony at the hearing included that of appellant. Appellant began working for appellee, a temporary agency, in December 2006. Appellant had notified the employer that he had a bullet fragment lodged in his back dating back to 1981, but that it was not an impediment to work. He was required to undergo a physical examination prior to hire, which included spinal x-rays. That exam was conducted in August 2006, and he was cleared for work.

Appellant contended that while at work on January 15, 2007, he slipped and fell on ice while lifting a tire at his temporary work assignment, Montana Tractor. Appellant said he told a co-worker but not the management at Montana Tractor or the temporary employment agency. Appellant did not bring this co-worker to testify on his behalf. Appellant testified that he finished his work that day, although his back hurt. The employer submitted daily sign-out sheets that it required each employee to sign. On the form dated January 15, appellant checked the “yes” box on the question asking whether he worked without a work-related injury or illness that day. Appellant explained that he was not lying, but rather he just “didn’t know the extent of it” and that “I was able to make it until that last day.” Appellant went to work on January 16 but left because he did not feel well. Appellant did not work on January 17 either. Personnel management for appellee Labor Ready confirmed that appellant let them know he was ill on January 16 and 17 but that he did not mention a work injury.

Appellant said his back pain did not go away, becoming so unbearable that his mother called an ambulance to take him to the local emergency room on the evening of January 18. He reported to the hospital personnel that he had hurt his back at work while moving tires on the morning of January 15. Plain x-rays confirmed the presence of an old bullet fragment in his lumbar spine at L-4, but this was reportedly not the source of his pain. He was given pain medications and instructed to work light-duty for a minimum of three days.

Upon report to his employer, appellee sent him on January 22 to Dr. Berestnev, who took appellant’s history of onset of injury at work. Dr. Berestnev ordered an MRI study and set a follow-up appointment for January 29. However, the workers’ compensation carrier

cancelled the appointment and refused to pay for the MRI. Appellant pursued his claim for a compensable, specific-incident injury, as well as temporary total disability, additional medical treatment, and attorney fees.

The employer resisted the claim in its entirety, contending that there were no objective signs of a back injury other than self-reported subjective complaints days after the alleged incident. Appellee employer contended that it should not be responsible for any benefits whatsoever, adding into evidence at the hearing that appellant was filmed walking without difficulty toward a Fayetteville courthouse in February 2007.

After taking the claim under submission, the ALJ found that appellant had failed to prove “by a preponderance of the evidence that he suffered an injury which arose out of and in the course of his employment.” The ALJ found that “while claimant did give a history of a work-related injury at the emergency room on January 18, 2007, claimant had not reported a work-related injury to Montana Tractor or to the respondent [temporary agency] prior to that date.” The ALJ found that appellant did not report such an injury even though he was in contact with management at the tire company and with the temporary agency on January 15, and further that appellant checked a box noting that he was not injured at work on January 15. There were no findings made as to objective findings of injury or lack thereof, nor were there findings made as to entitlement to additional medical treatment, temporary total disability, or attorney fees, as those rested on compensability. The claim was denied, and on appeal, the Commission denied the claim as well. This appeal followed.

A compensable injury is defined in Ark. Code Ann. § 11-9-102(4)(A) (Supp. 2007) as an “accidental injury . . . arising out of and in the course of employment. . . . An injury is ‘accidental’ only if it is caused by a specific incident and is identifiable by time and place of occurrence.” A compensable injury must be supported by objective medical findings not under the voluntary control of the claimant. Ark. Code Ann. § 11-9-102(4) and (16). Thus, the statute sets up the what, where, and when test of compensability. See *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001); *Weaver v. Nabors Drilling USA*, 98 Ark. App. 161, 253 S.W.3d 30 (2007).

Appellant argues that there is no substantial evidence to support a conclusion that appellant did not suffer a work-related back injury on January 15. He argues that his medical records, to the extent he was allowed any treatment at all, support his contention that he sustained a back injury at work on January 15. He asserts that he provided specific notice to his employer within days of the injury and was sent to a doctor of their choosing on that basis.

Appellee responds to appellant’s argument in its brief by making much ado about appellant’s brushes with the criminal court system and with private investigative firms showing appellant walking to a court building in Fayetteville in February 2007. Appellee presented evidence to support those accusations in the administrative hearing. We hold that this bears little to no relevance to the appeal before us because there were no credibility determinations made on these pieces of evidence submitted to the ALJ. Apparently, those were not persuasive to the issue at hand, which was whether appellant proved that it was more probable than not that he was hurt at work on January 15. We review only the findings made by the

Commission, and here the rejection of the claim rested on the ALJ's findings of failure to report a work-related back injury on January 15, 16, or 17. The ALJ findings go so far as to note that appellant affirmatively denied having been hurt at work on January 15.

Because the claimant bears the burden to demonstrate a work-place injury, and appellant failed to prove to the fact-finder that such occurred, we affirm.

Affirmed.

GLOVER and HEFFLEY, JJ., agree.